

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition Nos.: 45-014-07-1-1-00001
45-014-07-1-1-00002
Petitioners: John K. and Jeanne L. Austgen
Respondent: Lake County Assessor
Parcel Nos.: 45-15-21-401-002.000-014
45-15-21-401-001.000-014
Assessment Year: 2007

The Indiana Board of Tax Review (the Board) issues this determination in the above matters, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated their assessment appeals with the Lake County Property Tax Assessment Board of Appeals (PTABOA) by written documents dated March 5, 2009.
2. The PTABOA issued notices of its decisions on April 4, 2011.
3. The Petitioners filed their Form 131 petitions with the Board on May 19, 2011. The Petitioners elected to have their appeals heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 18, 2012.
5. The Board held an administrative hearing on March 5, 2012, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. The following persons were present and sworn in at hearing:

For Petitioner: John K. Austgen, Owner,
Jeanne Austgen, Owner,

For Respondent: Robert W. Metz, Hearing Officer.

Facts

7. The properties under appeal are two contiguous parcels: Parcel No. 45-15-21-401-002.000-014 with a one acre home site and 3.72 acres of agricultural land improved with

a residence located at 10515 West 129th Avenue, Cedar Lake (Parcel 002) and Parcel No. 45-15-21-401-001.000-014 with 17.8 acres of agricultural land improved with a detached garage and various farm buildings located at 10505 West 129th Avenue, Cedar Lake (Parcel 001).

8. The ALJ did not conduct an on-site inspection of the properties under appeal.
9. For 2007, the PTABOA determined the assessed value of Parcel 002 to be \$63,500 for the land and \$98,000 for the improvements, for a total assessed value of \$161,500 and the assessed value of Parcel 001 to be \$19,000 for the land and \$25,000 for the improvements, for a total assessed value of \$44,000.
10. The Petitioners requested an assessed value of \$25,000 for the land and \$98,000 for the improvements, for a total assessed value of \$123,000 for Parcel 002 and \$15,000 for the land for Parcel 001. The Petitioners contend the improvements on Parcel 001 have no value.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their properties' assessments:
 - a. The Petitioners contend that the assessed value of their one-acre homesite on Parcel 002 is incorrect based on the land order approved by the Department of Local Government Finance. *Austgen testimony*. According to Mr. Austgen, the value shown on the land order for 2007 is \$53,800; whereas the Petitioners' homesite is assessed for \$57,200. *Id.*; *Petitioner Exhibit 5*.
 - b. Even if the assessor used the correct land value, the Petitioners contend, the land rate is too high based on the sale of comparable properties. *Austgen testimony*. According to Mr. Austgen, a neighboring 20.78 acre parcel sold in March of 2006 for \$519,500, or approximately \$25,000 an acre. *Id.*; *Petitioner Exhibit 4*. Mr. Austgen testified that the neighboring property was vacant, agricultural land that had no amenities such as storm water run-off, gutters, curbs, sidewalks, street lighting and, like their property, had no access from West 129th Avenue. *Austgen testimony*. While the adjacent property was not improved, Mr. Austgen argues, the cost of a well, driveway, and sidewalks would be minimal. *Austgen testimony*. In addition, an agricultural property of 35.41 acres sold on December 17, 2004, for \$5,535 per acre. *Austgen testimony*. According to Mr. Austgen, the property, located on Wicker Avenue in Cedar Lake, had the same lack of amenities as their property and also lacked direct access to Wicker Avenue. *Id.* Mr. Austgen argues that these two sales are more persuasive evidence of the land's value than an appraisal, which he argues is merely an opinion of value. *Id.*
 - c. The Petitioners also contend that the land on Parcel 001 is over-valued. *Austgen testimony*. According to the Petitioners, developments on three sides of the parcel –

- the Wildwood subdivision to the west, the Monastery Woods subdivision to the east, and the Hanover Community High School to the south – have negatively impacted their property. *Id.* Prior to the Wildwood development, Mr. Austgen testified, run-off water drained to the far southwest corner of the subject property. *Id.* Once Wildwood was developed in the 1980s, the residents were allowed to grade their properties higher than the subject property which reversed the natural storm water run-off, so it now flows back to the Petitioners’ property and causes flooding and ponding. *Id.*; *Petitioner Exhibit 4*. Similarly, the Hanover School Corporation constructed a new track and made other improvements which have blocked the grass waterway run-off to the southeast of the subject property. *Id.* Likewise, the development of Monastery Woods caused run-off problems. *Id.*
- d. Because of the flooding, the Petitioners contend that the 9.56 acres of Blount soil currently classified as tillable should receive an 80% influence factor. *Austgen testimony*. Similarly, Mr. Austgen argues, the Pewamo silt and the Elliot silt, which total approximately six acres, should have a negative 50% influence factor applied. *Id.* Further, although a surveyor would not be able to precisely calculate the area because of the curvilinear positioning of the woods, Mr. Austgen argues that five acres is a reasonable estimation of woodlands on the parcel. *Id.*
- e. Finally, the Petitioners contend the farm buildings on Parcel 001 are over-valued. *Austgen testimony*. According to Mr. Austgen, the buildings on the parcel, other than the garage, have no value for modern agricultural methods. *Id.* Mr. Austgen contends that large, modern farm machinery, cropping methods, and storage methods would not work in the buildings. *Id.* In support of this contention, the Petitioners submitted photographs of the buildings. *Petitioner Exhibit 6*. In fact, the Petitioners argue, a prospective purchaser or investor would see negative utility in the buildings because the cost of demolishing them would exceed any utility a purchaser might derive from the buildings. *Austgen testimony*.

12. Summary of the Respondent’s contentions in support of the assessment:

- a. The Assessor’s representative contends that the land on Parcel 002 was properly assessed for 2007. *Metz testimony*. According to Mr. Metz, the Petitioners’ one-acre homesite was assessed according to the state-approved land rates at \$53,800. *Id.* In support of this contention, Mr. Metz submitted the property record card for the subject property and the state certified land rates for 2006 through 2011. *Respondent Exhibits 1 and 2*. The rest of the land was assessed as agricultural land. *Metz testimony*. According to Mr. Metz, the increase in the parcel’s assessment was due to the market influence factor. *Id.*
- b. Mr. Metz further argues that the comparable sales offered by the Petitioners may not have been valid sales because the Petitioners presented no evidence of the circumstances of the two sales they offered. *Metz testimony*. In addition, Mr. Metz contends, the Petitioners’ “comparable” properties were larger than the Petitioners’

property and were vacant, agricultural properties; whereas Parcel 002 is improved with a residence. *Id.*

- c. Mr. Metz also contends that the land on Parcel 001 was assessed correctly for 2007. *Metz testimony.* According to Mr. Metz, one acre of Parcel 001 was assessed for the Petitioners' farm buildings and the remaining acreage was assessed as tillable land. *Metz testimony; Respondent Exhibit 1.* While Mr. Metz agrees that some of the land may be properly categorized as woodland, he argues, there is no survey showing how much of the land is wooded. *Metz testimony.* In addition, Mr. Metz argues, the Petitioners presented no evidence to support their negative influence factors; nor does the state have any directive for valuing flooded areas or flood zones. *Id.*
- d. Finally, the Assessor's representative contends that the buildings on Parcel 001 were correctly assessed. *Metz testimony.* According to Mr. Metz, the farm buildings were assessed based on the residential and agricultural cost schedules. *Metz testimony; Respondent Exhibit 2.* Mr. Metz testified that the buildings were graded as D grade structures in fair condition. *Metz testimony; Respondent Exhibit 1.* Mr. Metz contends that the buildings are depreciated accurately for the March 1, 2007, assessment date and any increase in the assessment from 2006 to 2007 was the result of the local market influence factor. *Metz testimony.* Although the Petitioners claim that the buildings on Parcel 001 would have no utility for a large, modern farming operation, Mr. Metz argues, the Petitioners' property is not a large farming operation; nor would an investor purchase a seventeen acre parcel for a large operation. *Id.*

Record

13. The official record for this matter is made up of the following:
 - a. The Form 131 petitions,
 - b. A digital recording of the hearing labeled John and Jeanne Austgen,
 - c. Exhibits:

For Petition No. 45-014-07-1-1-00001 (Parcel 002):

Petitioner Exhibit 1 – Form 131 - Petition to the Board,
Petitioner Exhibit 2 – Form 115 - Notification of Final Assessment,
Petitioner Exhibit 3 – Form 130 - Petition to the Lake County PTABOA,
Petitioner Exhibit 4 – Sales disclosure form for the adjacent property,
Petitioner Exhibit 5 – Property record card for the subject property,
Petitioner Exhibit 6 – Aerial photograph of the subject parcel,

Respondent Exhibit 1 – Property record card,
Respondent Exhibit 2 – State Certified Land Rates Table for 2006-2011,

For Petition No. 45-014-07-1-1-00002 (Parcel 001):

Petitioner Exhibit 1 – Form 131 - Petition to the Board,
Petitioner Exhibit 2 – Form 115 - Notification of Final Assessment,
Petitioner Exhibit 3 – Form 130 - Petition to the Lake County PTABOA,
Petitioner Exhibit 4 – Letter from Torrenga Engineering, Inc., dated August 11, 2010,
Petitioner Exhibit 5 – Property record card for the subject property,
Petitioner Exhibit 6 – Photographs of the farm buildings,
Petitioner Exhibit 7 – Aerial photograph of the subject parcel,

Respondent Exhibit 1 – Property record card,
Respondent Exhibit 2 – Appendix C of the Indiana Real Property Assessment Guidelines, Schedule G.2, pages 18-24,

Board Exhibit A – Form 131 petitions,
Board Exhibit B – Notices of hearing dated January 18, 2012,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17.2, which shifts the burden of proof to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

15. Here, the land assessment for Parcel 002 increased from \$55,900 in 2006 to \$63,500 in 2007, which is an increase of 13.6%. The Assessor, therefore, has the burden of proving

the land assessment was correct on Parcel 002 for the March 1, 2007, assessment date.¹ Similarly, the assessment for Parcel 001 increased from \$36,900 in 2006 to \$44,000 in 2007, which is an increase of 19.24%. The Assessor, therefore, also has the burden of proving the assessment was correct on Parcel 001 for the 2007 assessment. To the extent that the Petitioners seek an assessment below the previous year's level for either parcel, however, the Petitioners have the burden of proving that value.

ANALYSIS

16. The Respondent argues that the assessed value of the land on Parcel 002 was correct based on the county's land rates for 2007. In support of this contention, the Respondent's representative submitted a property record card and a table listing the land rates for 2006-2011. The property record card submitted by the assessor, however, only calculates the land assessment for the March 1, 2011, assessment date. Thus, the property record card provides no evidence of the calculation that the county used to value the land on Parcel 002 at \$63,500 for 2007. Nor did Mr. Metz present any other evidence of the land's valuation. In order to carry its burden, the Respondent must do more than merely assert that it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case).
17. Even if the Assessor had shown that the land value on Parcel 002 was assessed according to the county's land valuation schedules, the Assessor presented no evidence that the county's land values represented the market value-in-use of the Petitioners' property. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*"). Thus, the Respondent failed to raise a prima facie case that the land value for Parcel 002 was correct for the March 1, 2007, assessment date. Therefore, the property's land assessment must be reduced to the previous year's assessed value, or \$55,900, under Indiana Code § 6-1.1-15-17.2.
18. That does not end the Board's inquiry, however, because the Petitioners contend the value of the one-acre homesite should be lowered to \$25,000 based on the sales of two similar properties. The Petitioners rely on the sale of an adjacent 20.78 acre property, which sold for \$519,500, or \$25,000 an acre, in March of 2006 and the sale of 35.41 acres of agricultural land that sold on December 17, 2004, for \$5,535 per acre. In making this argument the Petitioners essentially rely on a sales comparison approach to establish the market value-in-use of their property. *See MANUAL* at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it

¹ The Petitioners only appeal the land assessment on Parcel 002. However, even if the Board considered the entire assessment, the value of Parcel 002 increased from \$143,600 to \$161,500 – an increase of over 12%.

to similar, or comparable, properties that have sold in the market.”). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* This the Petitioners did not do. Mr. Austgen merely testified that the comparable properties were vacant, agricultural land and argued that improving the parcels with a driveway, a well and a septic system would have “minimal” cost. This falls far short of the burden to show comparability between the properties. Thus, the Petitioners failed to establish a prima facie case for a further reduction in the land assessment for Parcel 002.

19. Similarly, for Parcel 001, the Respondent argues that the property was assessed correctly. According to the Respondent’s representative, all of the land on Parcel 001 was assessed as tillable land with one acre for farm buildings. Mr. Metz also testified that the farm buildings were assigned a D grade and fair condition. In support of this contention, Mr. Metz presented the property record card for the subject parcel and an excerpt from the residential and agricultural cost schedules in the Guidelines. Like its case for Parcel 002, however, the Respondent presented no evidence that the property’s assessed value represented the property’s market value-in-use. Because the Respondent must do more than merely assert that it assessed the property correctly, the Respondent failed to raise a prima facie case that the assessed value of Parcel 001 was correct for the March 1, 2007, assessment date. *See Canal Square*, 694 N.E.2d at 808. The property’s March 1, 2007, assessment must therefore be reduced to its 2006 assessed value of \$36,900.
20. Again, however, the Petitioners contend the assessed value of Parcel 001 should be further reduced because the improvements have no value and the land’s assessed value does not take into consideration the negative effects of surrounding properties on the subject property. The burden of proving a lower assessment therefore lies with the Petitioners.
21. The Petitioners first contend that the farm buildings on Parcel 001 have no market value-in-use to a prospective purchaser of the land because the buildings are not appropriate for large, modern farm machinery and cropping and storage methods. However, the Petitioners presented no evidence to support this allegation. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). In fact, the Petitioners’ photographs show structurally sound buildings that could serve a number of purposes including equipment storage, grain storage and animal housing. Whether the Petitioners use the buildings for any purpose or whether a future purchaser could use the buildings does not alter the fact that the buildings exist on the property and add value to the property. Thus, the

Petitioners failed to raise a prima facie case that the buildings on Parcel 001 should be assessed as having no value.

22. The Petitioners also contend that their land is improperly classified and that the assessed value of their land does not reflect the negative impact that the development of surrounding properties has had on their property.
23. In Indiana, agricultural land values utilize the land's current market value-in-use, which is based on the productive capacity of the land, regardless of the land's potential or highest and best use. GUIDELINES, ch.2 at 99. In 2007, the statewide agricultural land rate was \$1,140 based on a six-year rolling average of market value-in-use as calculated by the Department of Local Government pursuant to 50 IAC 21-6-1(a). The agricultural land assessment formula also values farmland, in part, based on the productive capacity of each parcel's soil resources. *Id.* at 106. Soil maps prepared by the United States Department of Agriculture categorize land according to its productivity. *Id.* at 106.
24. There are seven categories of agricultural land use types: classified land, tillable land, nontillable land, woodland, other farmland, agricultural support land, and homesite. *Id.* at 102-105. Tillable land is further divided into subtypes to compensate for flooding. *Id.* at 104. Type 41 agricultural land has "damaging floods [that] occur two to four times in a ten-year period;" Type 42 agricultural land has "damaging floods [that] occur five times or more in a ten-year period;" and Type 43 land is "farmed wetlands" which is land verifiably designated as such by the U. S. Department of Agriculture. *Id.* Specific influence factors are applied based on each subtype of tillable land. *Id.* There are also subtypes for "other farmland" which includes Type 72 "land covered by a farm pond or running water." *Id.* at 105.
25. While the Petitioners' letter from Torrenga Engineering reports that various developments have altered drainage patterns in the area of the Petitioners' property resulting in several parcels draining run-off onto the Petitioners' land, the Petitioners failed to present any evidence that repeated, wide-spread flooding occurs on the property. There were no logs of how often such flooding occurs or pictures or surveys of how much property the flooding covers. And the engineering report merely states that the drainage has caused the property's farm pond to "expand beyond the intended banks during heavy rainfall episodes." It is not enough for Mr. Austgen to testify that "flow reversal... floods our property" and identify the Pewamo and Elliott soils as impacted and contend that the county should apply a 50% influence factor. Thus, the Petitioners presented insufficient evidence to support the application of an influence factor to the Elliott or Pewamo soils or a reclassification of their lands as Type 41, Type 42, or Type 45 land.
26. Similarly, the Petitioners' request for reclassification of 9.56 acres as woodland/pasture with an 80% influence factor is unsupported by the evidence presented. The agricultural land assessment formula involves the identification of agricultural tracts using data from detailed soil maps, aerial photography, and local plat maps. Each variable in the land assessment formula is measured using appropriate devices to determine its size and effect

on the parcel's assessment. Uniformity is maintained through the proper use of soil maps, interpreted data and unit values. GUIDELINES, ch. 2 at 99. Mr. Austgen merely contends that the 9.56 acres identified as Blount soils are woodland or pasture areas and that five acres might be a "reasonable estimate" of the woodland area. And while the Petitioners provided an aerial map of the parcel, the map is not sufficiently detailed to identify the soil classifications or to determine the size of various features such as woodlands on the lot. This falls short of the burden to quantify the amount of land that should be reclassified.

Conclusion

27. Because the properties' assessments increased more than 5%, the Respondent bore the burden of proving that the properties' March 1, 2007, assessments were correct. The Assessor's failure to do so means that the properties' assessments must be reduced to their 2006 assessed value, or \$55,900 for the land on Parcel 002 and \$14,700 for the land and \$22,200 for the improvements, for a total assessed value of \$36,900 on Parcel 001. The Petitioners, however, bore the burden of proving that they were entitled to any further reduction. The Petitioners failed to meet that burden.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed values of the subject properties should be reduced.

ISSUED: April 20, 2012

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.